

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

United States of America,	)
	)
Plaintiff,	)
	) Case No. 13 CV 50360
vs.	)
	)
Joshua L. Davis,	) Judge Philip G. Reinhard
	)
Defendant.	)
	)

**ORDER**

Petitioner Joshua Davis' motion for leave to appeal *in forma pauperis* [9] is denied. Petitioner must pay the full statutory filing fee of \$505.00 within thirty days of the entry of this order. Failure to remit the filing fee within thirty days could result in the Seventh Circuit dismissing petitioner's appeal. The Clerk is directed to send a copy of this order to the PLRA Attorney, U.S. Court of Appeals for the Seventh Circuit.

**STATEMENT**

Petitioner, Joshua Davis, a federal prisoner, filed an untimely petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2255, on November 12, 2013. *See* [1]. On March 18, 2014, the court determined that Davis' untimeliness could not be excused and dismissed his petition. *See* [6]. At that time, the court also declined to issue a certificate of appealability. *See id.*

Davis has now filed a notice of appeal and seeks leave to proceed on his appeal *in forma pauperis*. [9]. In support of his motion, he has submitted his Prisoner Trust Fund Account Statement. *See* [14]. While the Prisoner Trust Fund Account Statement suggests that Davis qualifies for pauper status, Davis has failed to articulate his bases for appeal. *See* [9]; [14]. Instead, he merely states that his issues on appeal are "ineffective assistance of counsel" and "equitable tolling." *See* [14] at 1. This is insufficient for the court to determine whether the appeal is taken in good faith. Under the rules of the U.S. Court of Appeals for the Seventh Circuit Court, if the district court certifies that an appeal is not taken in good faith, the appellant cannot prosecute the appeal *in forma pauperis*, but rather must pay the appellate fee in full for the appeal to go forward. Consequently, Davis must pay the full \$505 within thirty days or the Court of Appeals may dismiss his appeal for want of prosecution. *See Evans v. Illinois Dept. of Corrections*, 150 F.3d 810, 812 (7th Cir. 1998). If Davis wishes to contest this court's finding that the appeal is not taken in good faith, he must file a motion with the Court of Appeals seeking review of this court's certification within thirty days of service of this order. *See* Fed. R. App. P. 24(a)(5).

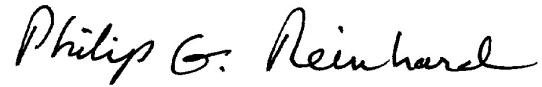
In sum, Davis' motion for leave to appeal *in forma pauperis* [9] is denied. Davis is ordered to remit to the Clerk of the Court the \$505 appellate fee within thirty days of the date of this order. If petitioner fails to comply with this order, the Court of Appeals may dismiss his appeal. Petitioner is responsible for ensuring payment of the filing fee as directed by this order, and should ensure that the institution having custody of him transmits the necessary funds. Nonpayment for any reason other than destitution shall be construed as a voluntary relinquishment of the right to file future suits *in forma pauperis*. The obligation to ensure full payment of the filing fee imposed by this order shall not be relieved by release or transfer to another prison. Davis is under a continuing obligation to inform the Clerk of this Court in writing of any change of address within seven days.

Payment shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor. Payment should clearly identify petitioner's name, as well as the district court and appellate court case numbers assigned to this action.

The Clerk is directed to send a copy of this order to the PLRA Attorney, United States Court of Appeals for the Seventh Circuit.

Date: 5/29/2014

ENTER:



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United States District Court Judge

Notices mailed by Judicial Staff. (LC)